

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 368 of 1991

with

APPEAL FROM ORDER No 369 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGVANJI T PATEL

Versus

HIRAJIBHAI M JAGIYA

Appearance:

1. Appeal from Order No. 368 of 1991
MR AM KAPADIA for Appellants
MR SK JHAVERI for Respondents No. 1 to 12
MR SN SHELAT for Respondent No. 13
2. Appeal from Order No 369 of 1991
MR SN SHELAT for Appellant
MR SK JHAVERI for Respondents No. 1 to 12
MR AM KAPADIA for Respondent No. 13

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/98

ORAL JUDGEMENT

1. The appellants in Appeal From Order No.368/91 are the defendants No.1, 2 and 3 and respondents No.1 to 12 are the plaintiffs and the respondent No.13 is the defendant No.4 in the suit, out of which this appeal has arisen. Appeal From Order No.369/91 has also arisen from the same order of learned trial court below Ex.5 therein. The appellant is the defendant No.4 whereas the respondents No. 1 to 12 are the plaintiffs and the respondents No.13, 14 and 15 are the defendants No.1, 2 and 3. For the sake of brevity and to avoid any confusion in this judgment, the plaintiffs are referred to as the plaintiffs-first purchaser, the defendant No.4 is referred as defendant No.4-second purchaser and the defendants No.1, 2 and 3 are referred to as the owner of the disputed property.

2. The plaintiffs-first purchaser filed the suit for specific performance of contract entered into between them and the defendants No. 1, 2 and 3 - owner on 25th July, 1988 together with the peaceful and vacant possession of the property agreed to be sold to them and alternatively they have prayed for the refund of earnest money together with the interest thereon from the date of agreement till the date of suit amounting to Rs.2,20,000/- and damages for breach of contract amounting to Rs.17,22,500/- together with interest at the rate of 18% per annum from the date of the suit till the date of the payment. The plaintiff-first purchaser which is a trust alleged to have purchased this property for educational purposes. This property was agreed to be sold by the defendant-owner to the defendant-second purchaser on 14th May, 1990. So it is also impleaded as party. Along with the suit, the plaintiff-first purchaser filed an application Ex.5 whereby they prayed that the defendants-owners be restrained from transferring or alienating the suit property to any person by any mode of conveyance either in person, or through servants, or agents till the disposal of the suit. It is necessary to mention here that the defendant-second purchaser was impleaded as party to the suit by amending the plaint. It has come out from the record that the defendant-owners have taken this plea that they have agreed to sell this land to the defendant-second purchaser and the possession has been delivered to it which necessitated for amendment and prayer of the nature as prayed for in Ex.5. Both the defendants-owner and second purchaser have contested the suit and the application. It is not necessary to give

out all the details of the pleadings of the parties in this judgment in view of the order which I proposed to pass in these two appeals. The learned trial court under its order dated 18-6-1991 granted the application Ex.5 of the plaintiffs-first purchaser and the order of maintaining status-quo of the disputed property passed by it on 7-6-1990 was made absolute till the disposal of the suit. Against this order, both the defendants-second purchaser and the defendant-owners preferred these two appeal from orders before this Court.

3. The suit is of the year 1990 and as usual the counsel for the parties have shown their anxiety that this Court may give direction to the learned trial court to decide the suit expeditiously. They further contended that looking to the nature of the suit and particularly the fact that both first purchaser and second purchaser have agreed to purchase the disputed land for some religious or educational or other charitable purposes, it is also in the larger interest of the society and more precisely the beneficiaries to it that till the disposal of the suit, neither of the purchasers in view of the pendency of this litigation otherwise also would not have taken any risk to start any project till their rights are being finally adjudicated and decided by the competent civil court.

4. The learned trial court has passed the order for maintaining the status-quo of the property in dispute. It is not in dispute that the defendant No.4-second purchaser is in possession of the suit land but because of the order passed by the Court to maintain the status-quo in respect thereof, nothing can be done by the defendant No.4-second purchaser. Learned counsel for the defendant No.4-second purchaser submitted that even if he succeeds in the case it will take long time to get the decree executed and plan of construction approved from the competent authorities. It is further contended that merely by execution of the sale deed by the defendants No.1, 2 and 3 in their favour it will not put any loss to the plaintiffs nor it will cause any injury to them. Even if the sale deed is executed it will certainly be subject to the decision of the suit and in the eventuality of success of the plaintiffs in the suit, the learned counsel for the defendant No.4-second purchaser stated that the Court may order that this sale deed will automatically come to an end or it will be taken to be or deemed to have been or treated to have been cancelled. Similarly, in case the defendant No.4-second purchaser is permitted to take all other actions for the purpose of preparation of site plan, submission thereof for the

approval to the competent authorities etc. it will not harm or cause any prejudice to the plaintiffs-first purchasers. In the case of success of the suit by the defendant No.4, second purchaser who is put in possession may immediately start the construction on the disputed land. So in sum and substance, learned counsel for the defendant No.4- second purchaser submits that he has no objection in case this Court modifies the order of the learned trial court to the extent that so far as the raising of the construction on the land in dispute is concerned, it may be continued but the defendant No.4 second purchaser and defendants No.1, 2 and 3- owners may be permitted to prepare the sale deed and get it registered with the registering authority and to permit the defendant No.4 - second purchaser to get prepared the site plan of the land and to submit the same before the competent authority and get sanction thereof. It has further been submitted that for the purpose of getting the sanction of plans, title deed is necessary and that is the reason that he is insisting for the permission of this Court for execution of the sale deed.

5. Learned counsel for the plaintiffs-first purchaser on the other hand, substantially agreed with the contention raised by the learned counsel for the defendant No.4, second purchaser but he apprehends that in case the sale deed is permitted to be executed then on the basis of the sale deed, the defendant No.4 second purchaser may take necessary proceedings for the correction of the revenue record and that will create many other complications and may also result in multiplicity of proceedings. This apprehension of the learned counsel for the plaintiff- first purchaser cannot be said to be illusory or without any substance. There is all possibility that when the sale deed is executed, the defendant No.4 - second purchaser may take consequential action of correction of entries in respect of the land in dispute in the revenue records.

6. So with the consensus of the learned counsel for the parties, it is hereby ordered that the defendant No.4 - second purchaser, plaintiffs - first purchaser and the defendants No. 1, 2 and 3 - owners are directed to maintain the status-quo in respect of the land in dispute. However, it is open to the owners to execute the sale deed in favour of the second purchaser and get it registered with the registering authority. The defendant No.4 - second purchaser is free to get prepare the site plan of the land, submit the same for sanction thereof before the competent authority and competent authority is also free to sanction same in accordance

with law, but on the basis of the sale deed they shall not be entitled to get the correction in the revenue records in respect of the disputed land. So to this extent, the order of the learned trial court is modified. Both the appeals stand disposed of accordingly subject to the modification aforesaid made in the order of the trial court.

7. In the facts and circumstances of the present case and particularly the fact that both the parties, the first and second purchaser, have entered into agreement to sale for purchase of this land for using the same for public or educational or religious or charitable purposes, I consider it to be appropriate that the suit should be given priority in the hearing and should be expeditiously disposed of. Learned trial court is directed to decide the suit within a period of six months from the date of receipt of writ of this order. It is expected of the parties to suit to cooperate with the learned trial court and they will not adopt any delaying tactics so that it becomes difficult for the trial court to carry out the order of this order. In case the learned trial court is unable to decide the suit for the reasons given within this time period as granted by this Court then the matter may be reported to this Court.

zgs/-